

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

**August 15, 2003**

**IN RE:**

**DELTA PHONES, INC. COMPLAINT AND  
PETITION FOR EXPEDITED RELIEF**

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**DOCKET NO.  
03-00425**

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**ORDER REQUIRING COMPLIANCE BY DELTA PHONES, INC.  
WITH TENNESSEE STATUTES AND RULES AND REGULATIONS  
OF THE TRA AND APPOINTING A HEARING OFFICER**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 21, 2003 for consideration of the *Complaint and Petition for Expedited Relief* ("*Complaint*") filed by Delta Phones, Inc. on June 27, 2003.

**Background**

Delta Phones, Inc. ("Delta Phones") was granted a certificate as a reseller of telecommunications services by the Authority on March 20, 2001 in Docket No. 00-01010. Delta Phones has been providing prepaid phone service to Tennessee customers pursuant to a resale agreement with BellSouth Telecommunications, Inc. ("BellSouth") approved by the TRA on December 20, 2002, in Docket No. 02-01018.<sup>1</sup>

On June 27, 2003, Delta Phones filed with the TRA a *Complaint* based on an alleged Interconnection Agreement with BellSouth. The *Complaint* alleges that BellSouth has knowingly

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<sup>1</sup> According to the *Complaint* filed on June 27, 2003, Delta Phones has approximately 2563 customers in Tennessee, primarily low-income, credit-challenged members of minority communities. According to statements of counsel during the July 21, 2003 Authority Conference, Delta Phones is now providing service to only about sixty-four Tennessee customers.

and consistently issued bills to Delta Phones that are inflated and inaccurate; has consistently refused to provide Delta Phones with electronic billing data and the systems access that is necessary for operation of Delta Phones' business; has used technician repair calls to win back Delta Phones customers; and, during the pendency of this "valid, good-faith dispute," has disconnected Delta Phones from the electronic operation support systems that are necessary to manage and control customer accounts. The *Complaint* further alleges that intervention by the TRA is now required as the parties have exhausted all means of informal dispute resolution provided for in the Interconnection Agreement. Delta Phones' *Complaint* has, essentially, asked the TRA to require BellSouth's accommodation of Delta Phones' requests for system access and cooperation with Delta Phones in determining the precise amount of Delta Phones' obligation. Delta Phones has also asked the TRA to "require that Delta Phones pay all undisputed current charges going forward" and require BellSouth to refund all amounts that Delta Phones has overpaid.

In the July 16, 2003 *Answer of BellSouth Telecommunication, Inc. to Complaint and Petition for Expedited Relief and Counterclaim* ("Answer and Counterclaim"), BellSouth agreed that all means of informal dispute resolution have been exhausted but, otherwise, denied all of Delta Phones' allegations. BellSouth suggested that Delta Phones' *Complaint* is merely a ploy to avoid the payment of its outstanding obligation to BellSouth in the amount of \$588,141.46 as of June 25, 2003. According to BellSouth, \$467,519.63 of this balance is uncontested but, still, Delta Phones has made no payment for services rendered over at least the past 115 days. BellSouth claimed that the various disputed amounts comprising the remaining \$102,572.87 of the total balance have been investigated by BellSouth and denied.

Pursuant to its *Answer and Counterclaim*, BellSouth filed a *Motion for Emergency Interim Relief* ("Motion") in which BellSouth declared its intent to terminate service to Delta Phones

following the July 21, 2003 Authority Conference in accordance with the terms of the Interconnection Agreement. In the alternative, BellSouth requested relief from the TRA as follows: (1) a bond from Delta Phones in the amount of \$467,519.63, representing, according to BellSouth, the undisputed amount of Delta Phones' outstanding balance for the past 115 days of service; and (2) a monthly bond, or a monthly payment into an escrow account, of \$122,120, representing Delta Phones' average undisputed monthly billing.

#### **The July 21, 2003 Authority Conference**

At the July 21, 2003 Authority Conference, the Directors addressed Delta Phones' *Complaint* and BellSouth's *Answer and Counterclaim* and *Motion for Emergency Interim Relief*. Delta Phones was represented by Henry Walker, Esq. of Boulton, Cummings, Connors & Berry and by Mr. Robert Lock of SourceCon, LLC who appeared by telephone. BellSouth was represented by Guy Hicks, Esq. As a part of the discussion with the Directors, BellSouth agreed to postpone the termination of Delta Phones' service until after the August 4, 2003 Authority Conference in exchange for a cash payment or bond in the amount of \$25,000, a compromise amount based on Delta Phones' estimate of the undisputed portion of its outstanding balance.

The Directors also addressed Delta Phones' delinquent 2003 Inspection, Control, and Supervision Fee<sup>2</sup> and its efforts to provide an updated surety bond or letter of credit,<sup>3</sup> its previous letter of credit having expired on February 5, 2003. The Directors expressed concern that the

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<sup>2</sup> Tenn. Code Ann. § 65-4-301(a) requires:

Every public utility doing business in this state and subject to the control and jurisdiction of the authority to which the provisions of this chapter apply, shall pay to the state of Tennessee on or before April 1 of each year, a fee for the inspection, control and supervision of the business, service and rates of such public utility.

<sup>3</sup> Tenn. Code Ann. § 65-4-125(j) provides:

[A]ll telecommunications service providers subject to the control and jurisdiction of the authority, except those owners or operators of public telephone service who pay annual inspection and supervision fees pursuant to § 65-4-301(b), or any telecommunications service provider that owns and operates equipment facilities in Tennessee with a value of more than five million dollars (\$5,000,000), shall file with the authority a corporate surety bond or irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000) to secure the payment of any monetary sanction imposed in any enforcement proceeding . . .

TRA had been informed on April 15, 2003 that a surety bond had been issued when, in fact, three months later the bond has not been obtained. Delta Phones reported that more definitive information on the status of the surety bond should be available by July 23 and reaffirmed its commitment to provide the surety bond as soon as possible and to pay its inspection fees promptly.

In regard to Delta Phones' full compliance with all TRA rules and regulations, the Directors also pointed out to Delta Phones that it may have failed to properly petition the TRA for approval of a transfer of Delta Phones' Tennessee reseller certificate in reference to an ownership transfer of Delta Phones.

The Directors voted unanimously to require Delta Phones to come into compliance with all rules and regulations of the TRA, including payment of outstanding inspection fees and procurement of a surety bond or letter of credit, by the close of business on July 31, 2003. To that end, the Directors voted unanimously to place this matter on the agenda for the August 4, 2003 Authority Conference to consider revocation of Delta Phones' reseller certificate in the event the Company fails to achieve full regulatory compliance by July 31, 2003. In addition, Delta Phones was ordered to provide detailed information to the TRA regarding the alleged transfer of ownership. In order to expedite consideration of the requested escrow account and the possible termination of service to Delta Phones, the Directors also voted unanimously to appoint the TRA's General Counsel or his designee to act as the Hearing Officer in this docket to monitor the ordered activity and take action, if necessary, to carry out the mandates of the Directors prior to the August 4, 2003 Authority Conference.

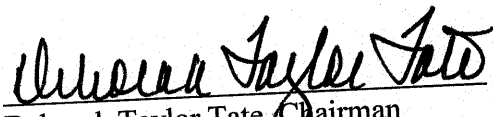
**IT IS THEREFORE ORDERED THAT:**

1. Delta Phones, Inc. shall provide to the TRA a valid surety bond or letter of credit in compliance with Tenn. Code Ann. § 65-4-125(j) no later than July 31, 2003.

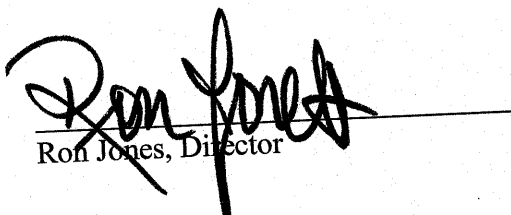
2. Delta Phones, Inc. shall remit to the TRA all 2003 Inspection, Control, and Supervision Fees no later than July 31, 2003.

3. Delta Phones, Inc. shall provide to the TRA information no later than July 31, 2003 regarding the alleged transfer of ownership for a determination as to whether the transaction requires TRA approval.

4. The General Counsel or his designee is appointed to serve as Hearing Officer in this docket to monitor the ordered activity and to address Delta Phones' compliance with the rules and regulations of the TRA and with this Order.

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director